

1
2 **BEFORE THE FEDERAL ELECTION COMMISSION**

3
4 In the Matter of)
5) MUR 5208
6 Amboy National Bank)
7 George Scharpf)
8

9 **CONCILIATION AGREEMENT**

10
11 This matter was initiated by the Federal Election Commission ("Commission"), pursuant
12 to information ascertained in the normal course of carrying out its supervisory responsibilities.

13 The Commission found reason to believe that Amboy National Bank, George Scharpf and Peggy
14 Ann Dembowski violated 2 U.S.C. § 441b(a), and that Amboy National Bank violated 2 U.S.C.
15 § 441b(b)(3) and 11 C.F.R. § 114.5(a).

16 NOW, THEREFORE, the Commission and Amboy National Bank and George Scharpf
17 ("Respondents"), having participated in informal methods of conciliation, prior to a finding of
18 probable cause to believe, do hereby agree as follows:

19 I. The Commission has jurisdiction over the Respondents and the subject matter of this
20 proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.
21 § 437g(a)(4)(A)(i).

22 II. Respondents have had a reasonable opportunity to demonstrate that no action should
23 be taken in this matter.

24 III. Respondents enter voluntarily into this agreement with the Commission.

25 IV. The pertinent facts in this matter are as follows:

26 1. Amboy National Bank ("Amboy") is a federally chartered bank headquartered in the
27 township of Old Bridge, New Jersey, and a "national bank" within the meaning of 2 U.S.C.
28 § 441b(a).

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1 2. George Scharpf is President of Amboy and Chairman of its Board of Directors.

2 3. Peggy Ann Dembowski is a Vice President at Amboy and serves as Cashier/Trust
3 Officer.

4 4. Jersey Bankers Political Action Committee ("JebPAC") is a political committee within
5 the meaning of 2 U.S.C. § 431(4). JebPAC is the separate segregated fund ("SSF") of the New
6 Jersey Bankers Association, of which Amboy is a member.

7 5. Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"), it is
8 unlawful for a national bank, such as Amboy, to make contributions "in connection with any
9 election to any political office, or in connection with any primary election or political convention
10 or caucus held to select candidates for any political office," or for any officer or director of a
11 national bank "to consent to any contribution" by the bank. 2 U.S.C. § 441b(a). Part 114 of the
12 Commission's regulations, which addresses corporate and labor activity in light of the Act, also
13 applies to "the activities of a national bank . . . in connection with local, State and Federal
14 elections." 11 C.F.R. § 114.2(a).

15 6. Amboy, which does not maintain a separate segregated fund, is not permitted to
16 "facilitate" contributions to candidates or political committees at the local, state or federal level,
17 i.e., it is not permitted to use its resources or facilities to engage in fundraising activities.
18 11 C.F.R. § 114.2(f). Amboy may communicate to its executive personnel "on any subject,"
19 including recommendations for specific candidates, so long as it limits its activity to
20 communication only and does not actually facilitate the making of contributions. 2 U.S.C.
21 § 441b(b)(2)(A); 11 C.F.R. § 114.3(a)(1); Advisory Opinion 1987-29.

22 7. Pursuant to 2 U.S.C. § 441b(b)(3)(C), 11 C.F.R. §§ 114.5(a) and 114.8(e)(4), it is
23 unlawful for any person to solicit contributions to a trade association's SSF without informing

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1 the solicitee of his or her right to refuse to contribute without reprisal. The solicitation may
2 suggest a guideline for contributions, provided that the solicitee is informed of the political
3 purposes of the fund and that the guidelines are merely suggestions, that the solicitee is free to
4 contribute more or less than the suggested amount, and that the solicitee will not be favored or
5 disadvantaged by reason of the amount of his or her contribution or his or her decision not to
6 contribute. 11 C.F.R. § 114.5(a)(2)-(5). *See also* Advisory Opinions 1998-19 and 1985-12
7 ("Solicitations of a trade association's . . . approved class of personnel of corporate members
8 must . . . meet the requirements of 11 C.F.R. § 114.5(a) regarding a proper solicitation.").

9 8. In the early 1990s, Amboy's Board of Directors approved a compensation plan by
10 which portions of Amboy's top three officers' bonuses would be placed in a separate account to
11 reimburse the officers for political contributions, charitable contributions and other
12 unreimbursable business expenses incurred by them to further Amboy's business objectives. In
13 1993 or 1994, this plan was put in place for all of Amboy's senior officers.

14 9. "Unreimbursable expenses" accounts were set up at Amboy for each of its senior
15 officers. For the top officers, including George Scharpf and Peggy Ann Dembowski, the minutes
16 of Amboy's Salary Committee meetings through 1999 list the amounts set aside for these
17 accounts as "exp." For other senior officers, the amounts to be set aside for the expense accounts
18 were determined each year by George Scharpf. The amounts ranged from 4% to 8% of each
19 senior officer's annual bonus.

20 10. Through 1999, when the bonuses were distributed each March, the amounts set aside
21 for these unreimbursed expenses were automatically deposited into each senior officer's expense
22 accounts by Amboy. Since 2000, the entire bonus has been placed in each senior officer's direct
23 deposit account, and the individual officer has transferred funds into his or her expense account.

1 11. Mr. Scharpf testified that, when the senior officers attained the level of vice
2 president, he informed each of them that he expected them to make political contributions in
3 order to support the communities in which Amboy has a presence.

4 12. Ms. Dembowski opened the expense accounts for the officers and ordered the
5 checkbooks. For checks that included addresses, the address printed below the account holder's
6 name was that of Amboy's headquarters, where each of the officers worked. Ms. Dembowski
7 kept the checkbooks for each officer's expense account in her desk drawer.

8 13. Until April 1999, Ms. Dembowski drafted most of the checks for political
9 contributions that were paid from these accounts, signing the senior officer's name followed by
10 the initial "D." Thereafter, Ms. Dembowski has signed checks for political contributions for only
11 herself and Mr. Scharpf. Until at least 2001, she also maintained Excel spreadsheets listing
12 political contributions made by each of the officers.

13 14. When political solicitations were received by Amboy or by individual officers, they
14 were generally forwarded to Ms. Dembowski. Mr. Scharpf and Ms. Dembowski coordinated the
15 political contributions and attendance at fundraising events in an informal manner. The political
16 contributions were coordinated to avoid duplicating contributions and to make the greatest
17 business impact for Amboy, and the attendance at events was coordinated to ensure Amboy was
18 represented through its senior officers.

19 15. Eleven senior officers used their expense accounts to make at least 149 contributions
20 totaling \$55,322 from February 1996 through January 2002. The contributions were primarily
21 made to non-federal candidates and party organizations, but also included eleven contributions
22 totaling \$8,000 made to federal candidates and party committees. The majority of contributions
23 were made by George Scharpf (55 contributions totaling \$27,565) and Peggy Dembowski (48

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1 contributions totaling \$12,367), with the remaining contributions (46 contributions totaling
2 \$15,390) spread among nine other officers. In several instances, contributions were made on the
3 same day to the same recipients, often in the same amounts.

4 16. The expense accounts were used primarily to make political contributions. All senior
5 officers who left Amboy received the balance of the funds in their accounts. Three officers never
6 used their expense accounts to make political contributions.

7 17. Ms. Dembowski performed all of her activities in connection with the opening of the
8 expense accounts, ordering the checks, drafting, signing and transmitting the checks and updating
9 the spreadsheets during work hours and using Amboy resources. Mr. Scharpf and
10 Ms. Dembowski coordinated the making of the contributions at Amboy headquarters during
11 work hours.

12 18. By using its staff and other resources to set up and administer the expense account
13 program, including collecting and forwarding contributions paid from these accounts, Amboy
14 facilitated the making of those contributions.

15 19. Since at least 1996, Amboy has authorized JebPAC to solicit its executive personnel
16 on an annual basis. Based on these solicitations, from 1996 through 2001, Amboy employees
17 contributed at least \$6,251 to JebPAC. The senior officers' contributions to JebPAC were not
18 made from their expense accounts but rather from their personal accounts.

19 20. After receiving written authorization, JebPAC would send copies of contribution
20 materials to Amboy, which were then forwarded to Amboy's officers and branch managers along
21 with a solicitation memorandum signed by Mr. Scharpf. JebPAC's contribution forms, which
22 have remained the same since 1996, included suggested contribution amounts corresponding
23 with various "Membership Categories."

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1 21. In his solicitation accompanying the contribution forms, Mr. Scharpf informs the
2 solicitee, "In an effort to maintain our continued support for JebPAC for [year], a minimum
3 contribution in the amount of [\$___] would be appreciated." The amount listed was usually
4 either \$25.00 or \$50.00. The solicitation does not inform the individual that he or she may
5 contribute more or less than the suggested amount, nor that Amboy will not favor or
6 disadvantage anyone based on the amount of the contribution or his or her decision not to
7 contribute.

8 22. Mr. Scharpf directed his executive assistant to collect and forward the JebPAC
9 contributions. She collected and forwarded the JebPAC contributions during work hours and
10 using Amboy resources.

11 23. By using its staff and other resources to collect and forward JebPAC contributions,
12 Amboy facilitated the making of those contributions.

13 24. Respondents contend that, while they were aware of the prohibition on political
14 contributions by national banks at the time of the activity in question, they did not understand
15 that the expense account program or the collecting and forwarding of individual officer
16 contributions constituted impermissible facilitation under the Act.
17

V.

1. Amboy National Bank facilitated the making of contributions to federal, state and local political committees, in violation of 2 U.S.C. § 441b(a). Amboy National Bank will cease and desist from violating 2 U.S.C. § 441b(a).

2. George Scharpf consented to the facilitation of such contributions, in violation of 2 U.S.C. § 441b(a). Mr. Scharpf will cease and desist from violating 2 U.S.C. § 441b(a).

3. Amboy National Bank failed to include the required notices on its solicitations for contributions to the Jersey Bankers Political Action Committee, in violation of 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a). Amboy National Bank will cease and desist from violating 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a).

VI.

1. Amboy National Bank will pay a civil penalty to the Federal Election Commission in the amount of Sixty Thousand dollars (\$60,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. George Scharpf will pay a civil penalty to the Federal Election Commission in the amount of Twenty-Four Thousand dollars (\$24,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

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1 IX. Respondents shall have no more than 30 days from the date this agreement becomes
2 effective to comply with and implement the requirements contained in this agreement and to so
3 notify the Commission.

4 X. This Conciliation Agreement constitutes the entire agreement between the parties on
5 the matters raised herein, and no other statement, promise, or agreement, either written or oral,
6 made by either party or by agents of either party, that is not contained in this written agreement
7 shall be enforceable.

8
9 FOR THE COMMISSION:

10 Lawrence H. Norton
11 General Counsel

12 BY: Rhonda J. Vosdigh
13 Rhonda J. Vosdigh
14 Associate General Counsel
15 for Enforcement

9/27/02
Date

16 FOR THE RESPONDENTS:

17 Dennis T. Kearney
18 Dennis T. Kearney
19 Counsel for Respondents

September 10, 2002
Date

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